

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

OAH Case No. 2014030894

v.

TWIN RIVERS UNIFIED SCHOOL
DISTRICT,

TWIN RIVERS UNIFIED SCHOOL
DISTRICT,

OAH Case No. 2014050203

v.

PARENT ON BEHALF OF STUDENT.

ORDER DENYING MOTION TO
DISMISS

On March 24, 2014, Parent filed with the Office of Administrative Hearings a Request for Due Process Hearing (Student's complaint), naming Twin Rivers Unified School District (Twin Rivers). On May 5, 2014, Twin Rivers filed a Request for Due Process Hearing naming Parent on behalf of Student. On May 21, 2014, OAH granted Twin Rivers' motion to consolidate both matters.

The consolidated matter proceeded to hearing on June 3, 4, 5, and 9, 2014. The matter was continued to June 24, 2014, to allow the parties an opportunity to submit written closing arguments. The parties timely filed their closing arguments and the record was closed on June 24, 2014, and submitted for Decision.

On June 24, 2014, Twin Rivers filed a Motion to Dismiss Student's complaint based on lack of jurisdiction, lack of standing and unclean hands. The motion is supported by a declaration under penalty of perjury of attorney Kyle Raney, as well as uncertified copies of orders from the Sacramento County Juvenile Court (Juvenile Court) dated May 16, 2014, limiting Parent's educational rights and referring Student to the local educational agency for appointment of a surrogate parent.

On June 24, 2014, Student filed a letter regarding child protective services proceedings and also attached an uncertified copy of the Juvenile Court order limiting Parent's education rights, with a certificate of mailing from the Juvenile Court dated June 18,

2014, and a notarized power of attorney dated August 13, 2009, updated May 17, 2012, wherein Parent designated grandparent to authorize educational services for Student.

On June 30, 2014, OAH ordered the parties to submit certified copies of the Juvenile Court order limiting Parent's educational rights by July 9, 2014. On July 2, 2014, Student filed a letter in response to OAH's June 30, 2014 Order requesting, in general, that grandparent be considered the educational rights holder in light of Parent's Power of Attorney designation.¹ On July 8, 2014, Twin Rivers filed with OAH certified copies of the Juvenile Court order after hearing dated May 21, 2014, and the May 16, 2014 findings and orders limiting Parent's right to make educational decisions and requiring the school district to appoint an educational surrogate.

APPLICABLE LAW

OAH's Jurisdiction

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to “ensure that all children with disabilities have available to them a free appropriate public education” and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C).) A parent or public agency has the right to present a complaint “with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.” (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

Definition of Parent

The definition of “parent” under the governing federal and state statutes and regulations is broad and includes many individuals. This is to ensure that children's rights are protected and not defeated because of an unusual parenting situation. Pursuant to the IDEA, the term “parent” means a natural, adoptive, or foster parent of a child (unless a foster parent is prohibited by State law from serving as a parent); a guardian (but not the State if the child is a ward of the State); an individual acting in the place of a natural or adoptive parent with whom the child lives, or an individual who is legally responsible for the

¹ Student's letter was received after 5:00 p.m. on July 1, 2014, and is therefore considered filed as of the next business day.

child's welfare; or an individual assigned to be a surrogate parent pursuant to title 20 United States Code section 1415 (b)(2). (20. U.S.C. § 1401(23); 34 C.F.R. § 300.30.²)

The State definition of parent for special education purposes is largely analogous to the federal definition. California defines “parent” as a biological or adoptive parent; a foster parent if the authority of the biological or adoptive parents to make educational decisions on the child's behalf specifically has been limited by court order; a guardian authorized to act as the child's parent or to make educational decisions for the child, including a responsible adult appointed for the child in accordance with Section 361 of the Welfare and Institutions Code; an individual acting in the place of a biological or adoptive parent, including a grandparent, stepparent, or other relative, with whom the child lives, or an individual who is legally responsible for the child's welfare; or a surrogate parent who has been appointed pursuant to Section 7579.5 of the Government Code. (Ed. Code, § 56028, subd. (a).)

When more than one party qualifies as a parent pursuant to these definitions, the biological parent is presumed to be the parent unless the biological parent does not have legal authority to made educational decisions for the child. (34 C.F.R. § 300.30 (b)(1); Ed. Code, § 56028, subd. (b)(1).) If a judicial decree or order identifies a specific person to act as the “parent” of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the “parent.” (34 C.F.R. § 300.30(b)(2); Ed. Code, § 56028, subd. (b)(2).)

Standing to Pursue a Request for Due Process

Special education due process hearing procedures extend to the parent as defined in Education Code section 56028, an emancipated minor, a student who is a ward or dependent of the court or for whom no parent can be identified or located when the administrative law judge determines that either the local educational agency has failed to appoint a surrogate parent as required or the surrogate does not meet the legal criteria, and to a public agency involved in any decisions regarding the student. (Ed. Code, § 56501, subd. (a).) “The appointment of a surrogate parent after a hearing has been requested by the pupil shall not be cause for dismissal of the hearing request.” (*Ibid.*)

OAH does not have jurisdiction to entertain a complaint filed by an individual who does not hold the student’s educational rights, or a complaint filed by a school district that names a person who does not qualify as a party. OAH may dismiss a matter in its entirety where it is evident from the face of the complaint that the alleged issues fall outside of OAH’s jurisdiction. Such circumstances may include complaints that assert civil rights claims or seek enforcement of a settlement agreement, complaints naming an entity that cannot be legally responsible for providing special education or related services under the facts alleged, or complaints brought by or naming an individual without legal standing to assert a student’s educational rights.

² All references to the Code of Federal Regulations are to the 2006 version.

Jurisdiction of the Juvenile Court

The superior court exercises the jurisdiction conferred by the juvenile court law and when doing so is known as the juvenile court. (Welf. & Inst. Code, § 245.) A proceeding in the juvenile court to declare a child to be a dependent child of the court is commenced when a social worker files a petition alleging that the child has been, or is at risk of being, abused or neglected. (Welf. & Inst. Code, § 325; see Welf. & Inst. Code, § 300, subds. (a)-(j) as amended this year by Senate Bill No. 855 [grounds for court jurisdiction].) The juvenile court may direct all such orders to the parent of a child who is subject to juvenile dependency proceedings as the court deems necessary and proper for the best interests of the child, including orders concerning the care, supervision, custody, conduct, maintenance, education, medical treatment and support of the child. (Welf. & Inst. Code, § 245.5.)

When the juvenile court, acting under the doctrine of *parens patriae*, acquires jurisdiction and properly assumes custody of the minor, its jurisdiction is paramount. (*In re William T.* (1985) 172 Cal.App.3d 790, 797.) As announced in *In re Syson* (1960) 184 Cal.App.2d 111, 117, “While the juvenile court, on adequate facts, retains jurisdiction and stays within the bounds of its legal power, no other court has the right to interfere with its supervision, for the state, of the children involved.” (*In re William T.*, *supra*, at 798.)

The presiding judge of the juvenile court may assign cases to be heard by a referee. Aside from matters involving double jeopardy, the referee shall have the same powers as a judge of the juvenile court. (Welf. & Inst. Code, § 248, subd. (a).) All orders by a referee, aside from orders removing a child from his home, shall become immediately effective subject to a right of review, and shall continue in full force and effect until vacated or modified upon rehearing by order of a judge of the juvenile court. (Welf. & Inst. Code, § 250.) Any party may file a petition for rehearing of an order by a referee within 10 days of service of the order. (Welf. & Inst. Code, § 252; *In re Clifford C.* (1997) 15 Cal.4th 1085 [where a referee’s order can become effective without approval of a judge, it becomes final 10 calendar days after service unless a party petitions for rehearing].)

LIMITING EDUCATIONAL RIGHTS AND APPOINTMENT OF SURROGATE

A referee of the juvenile court has the authority to limit the educational rights of a parent pursuant to Welfare and Institutions Code section 361, subdivision (a). Any interested person may petition the juvenile court, upon grounds of changed circumstances or new evidence, for a modification of a court order, including an order limiting educational rights. (Welf. & Inst. Code, § 388.) If it appears that the best interests of the child may be promoted by the proposed change in order, the juvenile court shall order that a hearing be set, cause notice to be given to all parties, and issue an order after hearing. (Welf. & Inst. Code, § 388 subds. (a)(1), (d); Cal. Rule of Court, rule 5.570.)

Upon limiting educational rights, the juvenile court shall appoint a responsible adult to make educational decisions regarding the dependent child, or, if it cannot identify a

responsible adult, the court shall refer the child to the local educational agency for appointment of a surrogate parent pursuant to Government Code section 7579.5. (Welf. & Inst. Code, § 361, subd. (a)(1) & (3).) Upon limiting a parent's educational rights, the court issues a JV-535, *Order Limiting Educational Rights*. The court shall order that the JV-535 and the JV-536, *Local Educational Agency Response to JV-535-Appointment of Surrogate Parent*, be served by first-class mail on the local educational agency no later than five court days from the date the order is signed. (Cal. Rules of Court, rule 5.650 (a) & (d).)

The local educational agency must ensure the rights of the student are protected when the child is a ward of the state, including reasonable efforts to ensure the assignment of an individual to act as a surrogate within 30 days of determination of such need or upon notification of its obligation to appoint a surrogate pursuant to juvenile court order. (20 U.S.C. § 1415(b)(2); 34 C.F.R. § 300.519 (a), (b), (h); Cal. Rules of Court, rule 5.650(d).) A "ward of the state" includes a child in the custody of the public child welfare agency, commonly known as a dependent child of the juvenile court. (20 U.S.C. § 1401 (36); 34 C.F.R. § 300.45; see Welf. & Inst. Code, §361, subd. (a)(1).) The local educational agency must notify the court of its appointment of an educational surrogate within five court days of the appointment. (Cal. Rules of Court, rule 5.650(d)(3)(A).) If it does not appoint a surrogate within 30 days, the local educational agency must notify the court of this fact within the next five court days and inform the court of its continuing reasonable efforts. (Cal. Rules of Court, rule 5.650(d)(3)(B).)

A surrogate parent shall serve as the child's parent and shall have the rights relative to the child's education that a parent has under the IDEA. (20. U.S.C. § 1401(23)(D); Ed. Code, § 56028, subd. (a)(5).) The surrogate parent may represent the child in matters relating to special education and related services, including the identification, assessment, instructional planning and development, educational placement, reviewing and revising the individualized education program, and in all other matters relating to the provision of a free appropriate public education of the child. (Gov. Code, § 7579.5, subd. (c).) This representation shall include the provision of written consent to the individualized education program. (*Ibid.*)

DISCUSSION

Judicial notice is hereby taken of the Juvenile Court findings and orders limiting Parent's educational rights and referring Student to Twin Rivers for the appointment of a surrogate. (See Evid. Code, § 452, subd. (d).) Based upon these findings and orders, as well as the certificate of Juvenile Court mailing submitted by Student, and the declaration of Mr. Raney, the following facts are determined: (1) Student is a dependent child of the Juvenile Court; (2) the Department of Health and Human Services (Department) filed a JV-180, *Petition to Modify Court Orders*, with the Juvenile Court on April 22, 2014, seeking an order limiting Parent's educational rights as to Student; (3) Juvenile Court Referee Marlene Hertoghe conducted a hearing on this petition on May 16, 2014, granted Department's petition, issued a JV-535 order limiting Parent's educational rights as to Student, and further ordered the local educational agency to appoint an educational surrogate for Student; (4) on

May 21, 2014, Referee Hertoghe signed the JV-184 order after hearing on the petition to modify court order; (5) on June 18, 2014, the clerk of the Juvenile Court mailed a copy of the JV-535 to Student; and (6) on June 19, 2014, Twin Rivers' received a copy of the JV-535, JV-180, and JV-184.

Although Parent retained educational rights at the time she filed Student's complaint on March 24, 2014, the Juvenile Court limited Parent's education rights as to Student on May 16, 2014, and ordered Twin Rivers to appoint an educational surrogate for Student. Prior to Twin River's motion to dismiss, no one informed OAH of the Juvenile Court's orders. Twin Rivers should have been provided a copy of these orders by May 23, 2014, no later than five court days from the date the orders were signed, pursuant to California Rules of Court, rule 5.650. Twin Rivers received the orders on June 19, 2014, and the clerk placed the orders in the mail addressed to Student on June 18, 2014. Nevertheless, these orders were immediately effective as of May 16, 2014, though subject to a right of review. At the time of hearing in June 2014, Parent did not meet the definition of "parent" for special education purposes and did not have the right to proceed to hearing.³

OAH does not have jurisdiction to adjudicate claims pursued by an individual who, at the time of hearing, does not hold education rights.⁴ Because the authority of the Juvenile Court is paramount in this regard, any prior designation by Parent purporting to transfer her education rights to the grandmother is without legal effect. The procedural protections of participating in a due process hearing and receiving a written decision adjudicating the issues, flows to a party. Twin Rivers has established that Parent did not have legal standing to prosecute Student's complaint and, therefore, was not a proper party to the action.

However, California law recognizes the right of a student to the due process hearing protections in his own right, if he is a dependent of the Juvenile Court and the administrative law judge finds he has no parent or that the responsible educational agency has failed to appoint a surrogate parent as required. At the time of hearing in early June 2014, Student was a dependent child of the Juvenile Court, did not have a "parent" who retained educational rights, and the local educational agency had failed to appoint an educational surrogate. As of the date of this Order, OAH is not aware of a surrogate being appointed for Student.

³ These orders became final on or about June 30, 2014, 10 calendar days after service, absent evidence that a party to the juvenile dependency proceedings has petitioned for a rehearing. (Welf. & Inst. Code, § 252.)

⁴ See *Driessen ex rel. B.O. and B.O. v. Lockman* [unpub. opn.] (11th Cir. May 10, 2013, No. 12-13277) [2013 WL 1920911] (Court of Appeal affirmed federal district court's dismissal of action by mother whose parental rights had been terminated by the time she filed suit; mother was no longer a parent and lacked standing.)

Regardless of fault, Twin Rivers had not appointed an educational surrogate for Student at the time of hearing, nor at the time the record was closed and submitted for decision.⁵ Under these unique circumstances, Education Code, section 56501, subdivision (a), serves to protect Student's rights rather than limit them. Student, himself, as a dependent of the court and without a parent or surrogate, was entitled to the protections of a due process hearing and to receive a full adjudication of his complaint. Twin Rivers has not provided any legal authority to counter this statutory provision.

Pursuant to Education Code section 56501, subdivision (a), the Legislature has determined that the rights of a student to proceed to hearing are of notable consequence and entitled to such protection that even the subsequent appointment of a surrogate parent is not grounds for dismissing a student-filed request for due process. So too, once this tribunal has recognized Student's right to proceed to hearing on his own behalf, all efforts to protect rather than defeat his rights must be made. Additionally, Student does not seek any remedies that flow to Parent and seeks only a determination as to his own rights for special education programming and services. Accordingly, Twin Rivers has not established grounds for dismissing Student's complaint.

In as much as this Order finds that Twin Rivers is correct in its position that Parent did not have standing to pursue Student's due process complaint, and finds alternatively that Student himself is entitled to a full written adjudication of his complaint, there is no need to address Twin Rivers' allegation that Parent acted with unclean hands.

ORDER

1. Twin Rivers' motion to dismiss Student's case is denied.
2. Twin Rivers shall provide a copy of this Order to Student's educational surrogate.

⁵The ALJ recognizes that Twin Rivers did not timely receive copies of the Juvenile Court orders limiting education rights and referring Student for the appointment of a surrogate, and that the law affords Twin Rivers a 30-day period to make reasonable efforts to effectuate the appointment of a qualified surrogate. However, Twin Rivers provides no authority for dismissing Student's case and depriving Student of his rights in this unique circumstance.

3. Twin Rivers shall provide a copy of this Order to the Juvenile Court of Sacramento County to be included in Student's dependency file.

DATE: July 11, 2014

/s/

Theresa Ravandi
Administrative Law Judge
Office of Administrative Hearings